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The Right to Housing in France: Still a Long Way to Go from Intention to Implementation

CLAIRE LÉVY-VROELANT*

Cet article a pour objectif de mettre en lumière les conditions de mise en œuvre du droit au logement en France. Si la loi adoptée en mars 2007 a ouvert la voie à un droit opposable, qui permet désormais aux personnes de faire valoir ce droit devant un tribunal, elle a aussi instauré de nouvelles inégalités devant le droit. En effet, les conditions requises pour accéder à ce droit excluent les personnes qui ne disposent pas d'un droit au séjour ou d'un titre de séjour en cours de validité, tandis que sa mise en œuvre effective se heurte au manque de logements disponibles, tout particulièrement en Ile-de-France, et à la concurrence entre prioritaires. Le terrible incendie de l'hôtel meublé parisien dans lequel 24 personnes—pour la plupart immigrées—ont trouvé la mort en avril 2005, montre que le dispositif d'hébergement d'urgence a trouvé ses limites. Si le droit français impose la mise à l'abri de toute personne en détresse, l'offre disponible, aussi bien en logement qu'en hébergement, ne suffit pas à satisfaire les besoins. L'examen de la mise en place d'un droit au logement pour tous révèle aussi de possibles conflits d'intérêt entre les différents acteurs décisionnaires dans ce champ : l'État (représenté par le Préfet), les collectivités territoriales, et les bailleurs sociaux. L'article envisage d'abord la législation en vigueur concernant le droit au logement en revenant sur ses origines. Ensuite, c'est le processus de sélection qui est analysé. L'article se conclut sur une réflexion sur les conséquences sociales de la mise en œuvre d'un tel droit, et sur ce que ses défaillances révèlent de l'état des protections dans la société d'après le welfare.

The goal of this essay is to examine the implementation of housing rights in France. Legislation adopted in March 2007 opened the possibility of an enforceable right, which can be asserted before a court. However, it also created new inequalities before the law. Indeed, the conditions required to access that right exclude people who do not have permanent residence or a valid temporary resident permit. The implementation of this right is also limited due to the lack of available housing, especially at Ile-de-France, and to competition between people with priority entitlements. The horrible fire at a furnished Parisian hotel in which 24 people—mostly immigrants—died in April 2005 demonstrated that the emergency housing system has its limits. While French law may impose obligations to shelter people in distress, the amount of housing and shelter space is not sufficient to meet the needs in this area. A review of the establishment of a housing right for all also demonstrated possible conflicts of interest between various decision-makers: the state (represented by the prefect), territorial authorities, and social housing authorities. This essay first examines legislation regarding the right to housing and explores the origins of the

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right to housing. The selection process is then analyzed. The essay concludes with a reflection on the social consequences of the implementation of the right to housing, and on what failures in its implementation reveal regarding the state of social protections offered by the post-welfare society.

IN NOVEMBER 2013, a trial opened in the core of Paris, eight years after the drama in April of 2005 when twenty-four people, including eleven children, died in a hotel blaze. For eight full days, inside one of the *Palais de Justice*'s biggest courtrooms, the families of the victims heard the witnesses and arguments by the lawyers, testified to the facts, answered the president of the court's questions, and were listened to. The Paris Opéra hotel was one of the "fifth category" (*i.e.*, low standard), as are most of the furnished hotels (*hôtels meublés*) in Paris where immigrants are accommodated as a temporary solution before they make their way in the city.¹ Because of existing asylum procedures, limited accommodation, and the obligation to house families in the name of the "protection of childhood," these temporary hotels have become the default tool for public policies, leading to undesirable effects. Most importantly, this has led to horrendous housing conditions (*e.g.*, no ability to cook at home and the obligation to move very frequently from one hotel to another) and has perpetuated the link between undocumented migrants, housing deprivation, and homelessness. In Paris, the situation is particularly dramatic. Data provided by the SAMU Social of Paris² show that between 1999 and 2011, the number of persons living in a family accommodated in hotels has increased from 1,834 to 11,431 and the number of individuals accommodated has decreased from 12,643 to 8,896; in a decade, the percentage of persons living in a family has grown from 13% to 56%.³

Furnished hotels have been transformed, based on housing need, into temporary "social hotels," so called because of the public nature of the subsidies. Such establishments are generally approved by police headquarters for a maximum of one hundred people, depending on the number of rooms and facilities. In the case of Paris Opéra hotel, it was authorized for sixty-two. During the fatal night of 15 April 2005, despite the fact that the Paris Opéra hotel was controlled by the police office responsible for the security of establishments open to the public, the lack of any other accessible housing solution meant that the establishment was overcrowded: eighty-two people were living there, and seventy-seven were present that night.

It is important to say that the victims who lost their lives in the fire were all foreign-born, "temporarily" placed in the hotel with very little hope of ever being properly housed. They had left countries at war or in which their lives were threatened: Algeria, Ivory Coast, and Sri Lanka. Most of them had neither a resident permit nor, consequently, a work permit. Almost all of the victims had been in France for years. Their children were born in France, but they were still without homes, forced to wander from hotel to hotel.

The trial ended with prison sentences. The hotel was a family business. The hotel managers, a husband and wife, were sentenced to three years in prison. The night watchman, their son, was sentenced to two years, and the son's girlfriend (who started the fire with a candle) was sentenced to three years imprisonment. But this sentencing has not put an end to the terrible ordeal; they have filed an appeal and, while we make the last revision to this

¹ Alain Faure & Claire Lévy-Vroelant, *Une chambre en ville. Hôtels meublés et garnis à Paris, 1860-1990* (Paris: Grâne, Éditions Créaphis, 2007).

² The SAMU social de Paris is a service set up by Paris City Council in 1993. It combines a mobile night-time outreach unit with a homeless crisis hotline. (Since one has to dial 115 to reach someone, the SAMU social is also called "the 115.")

³ Erwan Le Méner, "Quel toit pour les familles à la rue? L'hébergement d'urgence en hôtel social," *Métropolitiques* (12 June 2013), online: <www.metropolitiques.eu>.

paper, the trial continues.⁴ On the civil side, the victims' families have not, for the moment, received any compensation for the losses. But after the drama, the survivors have been rehoused in social housing flats in Paris and, thanks to the commitment of rights associations, have since the tragedy obtained the legal right to residence and consequently a proper home and a work position.

Starting from the Paris Opéra hotel tragedy⁵ is a way to approach the issue of rights to housing in its extreme and contradictory manifestations: after years of privation of rights, the tragedy allowed the survivors to finally realize their right to stay and receive a proper house. As many of the survivors express, however, the price paid for being properly housed and benefiting from the right to stay has been tremendously high. And in the end—other than the increased pressure on security issues in the hotels—the system that made possible such a disaster remains untouched.⁶ It is precisely that *system* that this paper proposes to deconstruct and analyze in order to capture the elements in the definition, and in the concrete implementation of the current right to housing, that limit its effectiveness. By system, we mean the constellation of individual and collective actors' behaviours, laws, procedures, and values that contribute to the creation of housing needs, housing rights, and concrete housing solutions, taking into account effects produced by the diversity of local configurations. In this context, it is important to mention that several recent important reports consider the emergency shelter system in France to be in crisis.⁷ Now, eight years after an enforceable right to housing was recognized in France, more than 55,000 priority applications are still not rehoused.

Since it is not possible to consider the whole picture,⁸ we will focus on the ambitions, features, meaning, results, and limits of one piece of housing legislation in France: the *DALO Act*.⁹ I am concerned primarily with the inequalities in the application of this law, and with the exclusions resulting from the limitations of the Law itself more generally: undocumented immigrants suffer worse housing conditions because they are excluded from the possibility of applying. In France, the obligation to provide *emergency shelter* for asylum seekers and families with young children (regardless of immigration status) is created by the *Code de l'action sociale et de la famille* L. 345-2, L.345-2-2, and L.345-2-3. The right to decent

⁴ The court has recently decided to examine the demands on the civil side while the appeal is pending.

⁵ As a sociologist with a background in history, I have been studying non-ordinary housing such as *hotels meublés*, *foyers*, *residences sociales*, etc. for years. My introduction to the issues related to the hotel Paris Opéra began with the analysis of the living conditions in Parisian hotels, and my commitment has developed further with the opportunity to follow the trial and the activities of the Association of the Victims' Families (AVIPO) and to collect the life stories of the families.

⁶ Claire Lévy-Vroelant, "Le jugement de l'incendie de l'hôtel Paris Opéra laisse intactes les causes du mal," *Le Monde* (12 February 2014), online: <www.lemonde.fr/idees/article/2014/02/12/le-jugement-de-l-incendie-de-l-hotel-opera-laisse-intacts-les-causes-du-mal_4365061_3232.html>. See also Erwan Le Méner & Nicolas Oppenheim, "The Temporary Accommodation of Homeless Families in Ile-de-France: Between Social Emergency and Immigration Management" (2012) 6:1 *European Journal of Homelessness* 83 ["Temporary Accommodation"].

⁷ France, Assemblée nationale, Constitution du 4 octobre 1958, Treizième législature, "Rapport d'information déposé par le comité d'évaluation et de contrôle des politiques publiques sur l'évaluation de la politique de l'hébergement d'urgence," n° 4221 (26 January 2012). See also Fondation Abbé Pierre pour le logement des personnes défavorisées, "19^{ème} rapport sur l'État du Mal-Logement en France 2015" (2015) Fondation Abbé Pierre pour le logement des personnes défavorisées ["19^{ème} rapport"] and Fondation Abbé Pierre pour le logement des personnes défavorisées, "20^{ème} rapport sur l'État du Mal-Logement en France 2015" (2015) Fondation Abbé Pierre pour le logement des personnes défavorisées ["20^{ème} rapport"].

⁸ The scientific literature (sociological, juridical, anthropological, and economic) on both the affordable housing crisis and on housing rights is abundant. Some of this literature is quoted and referenced in this paper. There are also good official reports. Concerning France, we have in mind in particular the series of annual reports of the High Committee on Housing for the Disadvantaged (HCLPD), see online: <www.hclpd.gouv.fr/>.

⁹ *Loi n° 2007-290 du 5 mars 2007*, JO, 6 March 2007 [*DALO*].

housing under the *DALO*, however, as we will see, has restrictions based on immigration status. In other words, the lack of enforceable housing rights is aggravated by the increasingly tenuous recognition of refugees' right to stay in French territory (and more broadly in Europe for the non-European), and by the instability of status regarding the right to stay for immigrants generally,¹⁰ which also means the impossibility of working in the legal labour market. The lack of equality before the law is a matter of location, income, and origins, as different analyses based on surveys and official reports clearly show.¹¹

We propose first to go back in time in order to figure out the legislation regarding housing rights in France. Doing so, we intend to provide definition, context, and explanation of the legal issues surrounding the *DALO Act* in France. Second, we will examine the “housing offer,” the selection process, who remains excluded, and why. Third, an analysis of broader social consequences will be proposed, including a discussion of the “post-welfare” society. By proposing the idea that French law continues to evolve based on a “post-welfare” society, I do not mean to suggest that the general level of protection has become lower, but rather that it has become more fragmented, with new lines of inequalities and exclusion. I intend to focus on the social and political tensions resulting from the increase of rights (although limited), on the one hand, and on the more and more problematic implementation of these rights on the other. I propose to consider that an “enforceable” right supposes personal capacities and skills to ensure recognition of this right; it contributes therefore to the individualization of social relations, with consequences for inequalities as regards protection.

I. THE *DALO ACT*—BACKGROUND

Behind the Paris Opéra hotel drama and the terrible stories of housing deprivation¹² lies a longstanding paradox: countries that are among the richest (and where the right to housing is a time-honoured legacy of the democratic/welfare regime) nevertheless worry about social cohesion and have proved incapable of providing access to housing for all.¹³ In France, there is a huge gap between, on the one hand, the general improvement of housing conditions (the residence area per person enlarged from 22.7 m² to 40.4 m² in less than three decades¹⁴) and, on the other hand, the persistence of homelessness and bad housing conditions fuelling poverty and evictions (13,000 effective evictions in 2013, a number that has doubled in the decade). Some argue that the number of vacant properties is as large as the number of

¹⁰ A draft law concerning the civil status of foreigners in France was introduced the 23 July 2014 in the Council of Ministers. Associations concerned with the rights of immigrants and refugees believe that the proposed law will substantially improve the integration of foreign-born people. See e.g. Analyse collective, *Projet de loi relatif au droit des étrangers en France* (February 2015), online: <www.gisti.org/spip.php?article4888>.

¹¹ See e.g. the report provided by the HALDE (The Equal Opportunities and Anti-discrimination Commission), *Accès au logement social: garantir l'égalité* (January 2011), online: <www.defenseurdesdroits.fr/sites/default/files/upload/promotion_de_%20legalite/acces-au-logement-social-garantir-l-egalite.pdf>.

¹² See e.g. Daniel Terrolle & Henri P. Gaboriau, “La mort comme seule réinsertion” (2003) in Daniel Terrolle & Henri P. Gaboriau, eds, *Ethnologie des sans logis* (Paris: L'Harmattan, 2003) 181; Julien Damon, *La question SDF. Critique d'une action publique* (Paris: Presses Universitaires de France, 2012); and FEANSTA, European Observatory on Homelessness, *Extent and Profile of Homelessness in European Member States: A Statistical Update* (December 2014) [European Observatory].

¹³ At the same time, countries where the right to housing exists only “on paper” can provide different forms of solidarity and social cohesion. Even if very relevant, in our view, this question will not be developed in this paper

¹⁴ France, Centre d'analyse stratégique (CAS), *L'évolution des prix du logement en France depuis 25 ans*, Report No 221 (April 2011).

homeless and ask public authorities to proceed with the requisition of vacant properties¹⁵ as the law permits.¹⁶ Others argue that a revision of the entire social housing allocation process represents a more credible (and more conventional) alternative when combined with a deep reform of the associative sector in charge of homelessness and rent control: the recent *ALUR Act* aimed to go in that direction.¹⁷

A. CONCEPTUALIZING THE RIGHT TO HOUSING

Though the French Constitution does not mention the word “housing” or “accommodation,” and especially does not refer to any obligation, the concept of a “right to housing” has been present in the law since the *Quilliot Act* of 22 June 1982, which called housing a “fundamental right,” and the *Mermaz Act* of 6 July 1989.¹⁸ The *Besson Act* of May 1990¹⁹ was also an important step forward because it extended the category of the beneficiaries to “those who have difficulty accessing and maintaining adequate housing” and created a new framework involving the department level where the national government can implement the law through contractual plans²⁰ driven by local authorities, ideally in collaboration with public and private landlords, state representatives, and NGOs.

At about the same time, the Constitutional Council set down a reference framework, stating that housing for disadvantaged people was a response to a demand of “national interest,”²¹ and defining the possibility for everyone to have decent housing as an *objective of constitutional value*, based on the constitution of 27 October 1946.²² As criticism increased about the weakness of leadership, the opacity of the housing allocation system, and the lack of effectiveness of the right to housing, the claim for a “legal right” grew, as did the role of the (national) High Committee on Housing for the Disadvantaged and of many activist NGOs. The idea of the enforceability of legal rights to housing emerged in 2002 in a context of growing concern with homelessness, “including the relevant enforcement measures.”²³ The High Committee, aware of the limits of the *obligation of efforts* (efforts achieved through area-based policy and local partnerships), proposed from 2002 an *obligation of result* (result achieved though the initiation of legal remedies to guarantee the right to housing).²⁴ In January 2004, Prime Minister Jean-Pierre Raffarin publicly referred to this solution and the necessity of the enforceability of the right. In the period following, enforceability’s “political

¹⁵ Requisition is the action by which the administrative authority, in the name of the general interest, imposes itself in order to transfer or make use of private property in exchange for compensation. This procedure, organized by Orders of 21 October 1945 and 21 December 1958, and revised by several laws afterwards, is politically sensitive and a matter of periodic debate. See e.g. François Béguin, “Aide aux sans-abri: ‘L’Etat ferait mieux de réquisitionner ses propres bâtiments,’” *Le Monde* (29 October 2012), online: <www.lemonde.fr>.

¹⁶ Typhaine Cornacchiari, “Une plate-forme pour le droit au logement opposable,” *ATD Quart Monde* (15 October 2006), online: <www.atd-quartmonde.fr/Une-plate-forme-pour-le-droit-au.html>.

¹⁷ *Loi n° 2014-366 du 24 mars 2014*, JO, 26 March 2014.

¹⁸ *Loi n° 82-526 du 22 juin 1982*, JO, 23 June 1982; and *loi n° 89-462 du 6 juillet 1989*, JO, 8 July 1989.

¹⁹ *Loi n° 90-449 du 31 mai 1990*, JO, 2 June 1990.

²⁰ These plans are called PDALPD, “departmental action plans for the housing of disadvantaged persons” (*plans départementaux pour le logement des personnes défavorisées*).

²¹ Constitutional Council No. 90-274 DC of 29 May 1990.

²² Constitutional Council No. 94-359-DC of 19 January 1995. See generally Jean-Philippe Brouant, “Implementation of the Enforceable Right to Housing (DALO) Confronted by the French Regions” in Noémie Houard, ed, *Social Housing Across Europe* (Paris: La Documentation Française, 2011) 278 [“Implementation”].

²³ Paul Bouchet, member of the High Committee on Housing for the Disadvantaged, quoted in René Ballain & Francine Benguigui, eds, *Mettre en oeuvre le droit au logement. L'accès au logement: des évolutions en débat I* (Paris: La Documentation Française, 2004) at 37.

²⁴ Noémie Houard & Claire Lévy-Vroelant, “The (Enforceable) Right to Housing: A Paradoxical French Passion” (2013) 13:2 *International Journal of Housing Policy* 202.

entrepreneurs”²⁵ promoted the Scottish model because it placed emphasis on the requirement for communities to offer accommodation to any homeless person considered a priority and “who had not intentionally placed themselves in that situation.” In Scotland, this process began with the 2001 Housing Act, which imposed new duties on local authorities to provide temporary accommodation for non-priority homeless households and new obligations on Registered Social Landlords to give reasonable preference to homeless households. More radical reforms were introduced in the 2003 Homelessness Act, culminating in the commitment that virtually all homeless people in Scotland would be entitled to be housed by 2012. Such objectives were principally supported by the gradual abolition of “priority need” criterion to end the traditional “discrimination” against single persons and childless couples.²⁶

The High Committee met the Scottish Federation of Housing Associations (SFHA) in the spring of 2005 and then, drawing on that experience, the High Committee outlined its own roadmap. The result was a profound change in the balance of power, including the appointment of a responsible community upon which an obligation to achieve a result would rest. Consequently, while the central state would retain the duty to house, the power to achieve its goals concretely lay primarily with the municipalities and social landlords over whom the state had little control.

The idea was then proposed that one (or several in certain cases) COMED (*commission de médiation*) should be established at the departmental level in order to receive the applicant’s complaint and evaluate its legitimacy and eligibility. The commission would then transmit its recommendations to the responsible authority, which would seek competent operators to address the specific housing problem. Social landlords would commit themselves to house priority households, and the 30% “prefect quota”²⁷ would also be firmly mobilized and not diverted for other purposes. If housing was not found within a certain period (determined according to the urgency of the situation and the average waiting time²⁸ for housing in the area), the applicant could then appeal to a judge for a judgment against the state.

The quasi “ready to use” Scottish model was also popular among advocacy groups and charitable organizations. Started in 2003 by six organizations, the “Platform for the Enforceable Right to Housing” expanded rapidly by the end of 2006, bringing together some sixty humanitarian and charitable organizations and housing activists. It is important to note that the Platform reinforced and made official a consensual interpretation of *social exclusion as an individual lack of access to fundamental rights*, ignoring alternative conceptions of social exclusion such as poverty, lack of capital, insufficient capabilities, and inequalities. This legalist conception was also, in a way, based on the idea that housing provision was sufficient in number, quality, and price to the level of need. It did not approach in detail the local balance between supply and demand. The idea was also to review the role of the state.

²⁵ John W Kingdon, *Agendas, Alternatives and Public Policies* (Boston: Little, Brown and Co, 1984). The term “political entrepreneur” proposed by Kingdon refers to pivotal players who, in response to a given problem, try to promote alternative public policy by investing their resources (time, energy, reputation, money, etc.) in exchange for a benefit, whether objective or symbolic, that they anticipate.

²⁶ Suzanne Fitzpatrick, Sarah Johnsen & Beth Watts, *International Homelessness Policy Review: A Report to Inform the Review of Homelessness Legislation in Wales* (January 2012) at 3.

²⁷ Thirty per cent of social housing units are “reserved” by law for the prefect, who is supposed to allocate them to those most in need—actually mainly the *DALO* applicants recognized as priority by the COMED.

²⁸ The average waiting time is officially established by department. It is, for instance, ten years in Paris for a three-room flat and one year in a rural or less urbanized department like Allier, Corrèze, or Sarthe. An “abnormal waiting time” means a waiting time longer than average. See “*Droit au logement opposable: répétition générale et deniers réglages*,” online: <www.senat.fr/rap/r08-092/r08-0927.html>.

Raising public awareness by disseminating numerous press communiqués,²⁹ the Platform focused on asserting the right to housing as a fundamental right, with the double demand of a guarantee by the state and a strong right for individuals, enforceable in court. But despite the efforts of the High Committee and the Platform for the Enforceable Right to Housing to build a consensus, differences remained on three crucial points: the responsible political authority, the schedule, and the housing stock involved.

B. A WINDOW OF OPPORTUNITY

Inspired, as mentioned, by the Scottish Homelessness Monitoring Group, the High Committee suggested setting up a national monitoring committee and a national evaluation team, including “pilot projects.” This important initiative opened the floor to the candidate Nicolas Sarkozy to take up the issue in his presidential campaign from January 2007 with the “Zero Homeless” slogan. However, the attention devoted to the issue of housing by all presidential candidates remained confined to housing policy experts: it was not yet part of a broader discussion in society. The *Enfants de Don Quichotte*’s³⁰ action in winter of 2006–2007 made the difference. Together with homeless persons and activists, they set up a camp of about one hundred tents on the banks of the Canal Saint-Martin on January the 16th, mediatizing homelessness from the very core of Paris and creating a “scandal” at the apogee of the presidential election campaign. The idea of “enforceability” entered media debates, and the association leader, Augustin Legrand, became a very popular figure. In May 2006, Prime Minister Dominique de Villepin declared his interest in *DALO* and announced his decision to allow pilot projects where local authorities volunteered. This process involved many actors *on a local basis*, including state social services and social housing organizations. As for the provision of necessary dwellings, it involved not only social housing stock, but private rental housing as well. An agenda was set up according to the HCLPD report propositions.³¹

The enforceable right to housing was introduced by the *DALO Act* in 2007 as a new procedure, stating that the right to housing would be exercised via mediation and then, where applicable, via legal appeal.³² Prepared and adopted thanks to a consensus from right and left political parties—even if a matter of debate regarding its efficiency and its philosophy—this law introduced a rupture into the previous logic regarding the implementation of the right to housing. By replacing the “obligation of means” with the “obligation of result,” the *DALO Act* places the state as guarantor and makes the state responsible for its effectiveness. Homeless persons or persons suffering poor housing conditions can access the COMED (one

²⁹ See Initiatives Pour un Autre Monde (IPAM), *Plate forme “pour un droit au logement opposable,”* online: IPAM <www.reseau-ipam.org/spip.php?rubrique246> and the webpage of the High Committee, online: <www.hclpd.gouv.fr>.

³⁰ “The Children of Don Quixote” was founded in 2006. The association aims to protest against homelessness See online: <facebook.com/pages/Les-Enfants-de-Don-Quichotte/184794634957>.

³¹ HCLPD, “Rapport au Premier ministre sur l’expérimentation locale du droit au logement opposable” (October 2006) at 11.

³² “Implementation,” *supra* note 22 at 279. The *DALO Act* stipulates that:

The right to decent and independent housing, mentioned in article 1 of Act no. 90-449 (31 May 1990), whose objective is the implementation of a right to housing, is guaranteed by the State to all people who reside in the French territory on a regular basis and in conditions of permanence (defined by a decree of the Council of State) and who are not able to access or maintain housing own their own.

This right is first exercised through mediation and, if necessary, through an adversarial process as defined at article 1 and articles L. 441-2-3 and L. 441-2-3-1.

per department³³) as outlined earlier; if recognized as right-holders, those persons can go to the court and ask for the enforcement of their right.

In this matter, it is important to refer to the French Housing and Building Code (or *CCH*), which has implemented, since its creation, the legal changes of the *DALO* as they impact concrete modalities in the field of construction and housing.³⁴ The following quotation aims to indicate precisely the delicate operation through which the legislator has operationalized state responsibility by delegating it to local authorities (at the department level), according to the *DALO Act*. The *CCH* establishes that:

At each Department, one or several mediation commissions are created through the Department State representative. Each commission is chaired by a qualified person nominated by the State representative.

According to the State Council decree, commissions are composed in equal parts by:

1. state representatives;
2. representative of the Department, public organizations for intercommunal cooperation, and municipalities;
3. representatives of social housing bodies and of organizations managing housing structures, temporary housing facilities, shelters or social hotel residences, who are active in the Department;
4. representatives of tenants' associations and of associations and organizations active in the field of social integration or housing of marginalized persons, working in the Department.

A representative of the legal entity managing the Department's integrated intake and orientation services can assist the commission on an advisory basis.³⁵

Regarding the conditions to apply, priorities are established. The *CCH* states that:

A mediation commission can be accessed by any person who satisfies the statutory conditions for access social housing and who has not received any adapted offer following his/her housing application within the statutory time limit (*CCH* article L.441-1-4). A commission can be accessed without delay when the applicant is in good faith, has no home, or is threatened with eviction without relocation options, or is housed or accommodated temporarily in an institution, shelter or social residence hotel, or is housed in places unfit for living, unhealthy or dangerous. A commission can also be accessed without delay when the applicant is housed in an obviously overcrowded or indecent place, when there is at least one minor child or one dependent person living with a disability involved, as defined by s. L.114 of the *Code de l'action sociale et des familles* (Social Action and Family Code), or if he/she lives with a disability, as defined under the same code.³⁶

³³ Departments are the smallest administrative entity and local authority in charge of, among other things, social benefits. Departments were introduced by the legislator during the French revolution (1790). France has 101 departments, which compose 22 regions. Paris (Ile-de-France), Lyon (Rhône-Alpes) and Marseille (Provence-Alpes-Côte d'Azur) regions are the most populous ones.

³⁴ *Code de la construction et de l'habitation [CCH]*.

³⁵ *Ibid* art L441-2-3.

³⁶ *Ibid*.

From these quotations, it is understandable that this right is a quite extensive one, but also that it is conditional. It is also clear that this quite complex system introduces a competition between potential right holders, and that it is strictly dependent on the availability of housing stock.

A gradual implementation was decided upon: a right to housing should be recognized for anyone in an emergency situation by the end of 2008, made enforceable for families with children by May 2012, and then further extended to all in March 2014³⁷—with the restriction that applicants need either to have French nationality or a valid regular residence permit. Some argue that, rather than a real step toward effective rights, a version of a “poor right for the poor” has been invented; rather than a real path to effective rights, it has been, at least in the more tense territories (like Paris, Lyon, and Marseille regions) a vague, politically limited agenda established under pressure from the streets and in accordance with a widespread preoccupation in the public opinion. But if the *DALO* theoretically enables jurisdictions to enforce the right to housing, the final decision concretely belongs to the local stakeholders. In this matter, underlying one of the main issues a report has been requested by the minister in charge of housing,³⁸ in order to clarify the obstacles that discourage the prefects to use their quota (30%) which has been expressly reinsured.³⁹

II. THE PATH TO EFFECTIVE RIGHTS

A. SOCIAL AND “VERY SOCIAL” HOUSING: ALLOCATION PRACTICES

Housing is allocated in one of three ways. The ordinary procedure for social housing allocation is complex and gives way to different treatments in the territories. It involves basically six steps, starting from the application and ending when the demand arrives at the allocation committee. Besides this common procedure, as defined by *CCH* article L.441-1, separate allocation channels (*filières d’attribution*) have been designed to meet the needs of persons potentially eligible for social housing under conditions defined in the *Besson Act* (31 May 1990). These channels are implemented under “departmental action plans for the housing of disadvantaged persons” (PDALPD). There is also, finally, a third “new channel” resulting from the treatment of the *DALO* appeal. The prefect quota (30%) applies mainly to the latter channel, but it is to be noted that its fulfillment is not easy. On a legal level, the prefect can impose an applicant on a recalcitrant social housing body, but in doing so may face open conflict with the enterprise and may be forced to bear the costs of this heavy and complex procedure.

Who should get priority social housing is a key question. In France, as in many countries in Europe with a longstanding welfare state,⁴⁰ social housing was built to address the perceived housing-market failure to deliver sufficient affordable housing to a useful and deserving working class. Social housing was also built to enable slum clearance and end the use of shantytowns. Since the *DALO Act*, social housing has become more closely associated with policies aimed to tackle homelessness. At the same time, the economic crisis has made

³⁷ Houard, *supra* note 24.

³⁸ France, Conseil Général de l’environnement et du développement durable, *Les contingents de logements locatifs sociaux réservés par l’État*, by Jean Chapelon, Thanh-Nhuan Nguyen & Patricia Perrin, Report No 008145-01 (November 2012) at 5.

³⁹ *CCH*, *supra* note 34 art R*441-5.

⁴⁰ Claire Lévy-Vroelant, “Temporary Housing” in Susan Smith, ed, *The International Encyclopaedia of Housing and Home* (Oxford: Elsevier, 2012) 172 [“Temporary Housing”].

social housing the only option for a larger part of the population. Social housing, however, only partly meets the housing needs of homeless people, even in areas where the housing supply is sufficient or exceeds demand. There are several reasons for this. First, social housing allocation practices often reflect a concern about negative effects associated with spatial concentrations of poverty that housing homeless people at high rates could create. Second, social housing providers may be reluctant to house tenants they perceive as presenting “management problems.” Third, the level of openness or restrictiveness that social housing presents vis-à-vis homeless people is related to the social housing movement’s history. In France, it is clear that its perceived function, from inside as well as from outside, and since the beginning, has been to provide adequate affordable housing to wage workers and their families more than to the poorest.⁴¹ Social housing may then not always be very open to some groups of homeless people (or other groups) for “cultural” and historical reasons.

The HALDE⁴² reports from the last available INSEE⁴³ housing survey (2006) found that immigrant households, as defined by the national statistical system,⁴⁴ receive less favourable treatment regarding access to housing. Immigrants are often considered by social landlords to be tenants both “at risk” and potentially the cause of problems. This prejudice is quite widespread so that immigrants receive housing of lower quality both in terms of the type of housing offered and the location. Immigrants also experience longer waiting times to get an offer for housing. They are more numerous in the oldest and less well maintained parts of the stock, and they are given less opportunity to relocate. These specific manifestations of discrimination thus lead the High Council on Integration to report a “gentle but systemic discrimination” in the social housing sector:

This inequality of treatment appears to mainly be the result of a collective and progressive construct of practices leading to reproducing inequalities, a process that is more or less controlled, conscious or acknowledged. There are often revealed a posteriori, by statistical comparison between the demands and the effective allocation among different groups of applicants, according to their characteristics. The European Committee of Social Rights notes that, since 2004, statistics show longer delays for immigrant applicants than for others. It thus suggests the existence of a problem of indirect discrimination against immigrants in access to social housing.⁴⁵

Although it is quite well developed and has been modified by successive orders, the legal framework for social housing allocation, as defined in the *CCH*, allows a lot of flexibility to social landlords and reserving agencies (*organismes réservataires*) with regard to the allocation of social dwellings:

⁴¹ Claire Lévy-Vroelant & Christoph Reinprecht, “Housing the Poor in Paris and Vienna” in Kathleen Scanlon Christine Whitehead & Melissa Fernández Arrigoitia, eds, *Social Housing in Europe* (Oxford: Wiley Blackwell, 2014) 297 [“Paris and Vienna”].

⁴² The French Equal Opportunities and Anti-discrimination Commission (*Haute autorité de lutte contre les discriminations et pour l’égalité*).

⁴³ National Institute for Statistics and Economical Studies, the French official statistical agency.

⁴⁴ In the French context, “immigrant” is an official statistical category that includes foreigners having settled in France and having secured a right of residence (or has been granted French citizenship). In a broader sense, the term “immigrant” is used, statistically speaking, to designate anyone having migrated to France with the intention of staying, independent of his or her legal status.

⁴⁵ HALDE, *supra* note 11 at 17.

This flexibility provides an opportunity for stakeholders to apply general rules in a way that is adapted to different local contexts. However, considering the ambiguity or vagueness of legal texts, stakeholders can also put in place practices that, in fact, give rise to unequal treatment and even discrimination.⁴⁶

Barriers that exist to social housing are based on what homeless people are perceived to be like, that is, characterized by severe mental illness and problematic drug and alcohol use rather than what the reality of much homelessness actually is: people in poverty who have lost housing. That the street leads to mental health and addiction concerns is something quite different.⁴⁷

In a context where the working classes have become more fragmented and vulnerable (in a more acute way since the end of the nineties), traditional welfare-based options have been replaced: social programs now aim to link “insertion” (entry or re-entry into the labour market) to housing—often under the leitmotif “housing is not enough.” This option, which is also observable in other countries in Europe, is powered by a variety of associations and civic organizations belonging to a vast and re-emerging third sector. “Very social” providers and their staff not only deliver “new housing products” to those “in need,” but they are also supposed to introduce applicants to the norms of employment and encourage them to be more responsible. In France, there is a range of “very social” housing options, from emergency shelters to hotels and social residences. In fact, *DALO* includes, besides housing, a shelter dimension: in certain cases, applicants can be given temporary accommodation.

It is also certainly worth noting that non-profit organizations increasingly contribute to public action, specifically in the field of housing. Between activism (fight for the rights) and social work (accompanying and support), this “street-level bureaucracy”⁴⁸ conducts day-to-day work in the field of access to justice for disadvantaged people, playing an ambiguous policy-making role. By favouring access to the enforceable right to housing, non-profits certainly contribute to empower individuals, but in doing so they also exercise discretionary power in the selection process and in the reinforcement of mainstream requirements and values. In other words, the *DALO* procedure functions thanks to street-level bureaucratic agents who enable the system to carry on and engage in a selection process at an early stage—before the mediation commission.⁴⁹ Indirect or even unintentional discrimination based on place of origin and the lack of diverse types of capital (social, financial, professional, linguistic, etc.) is also operating as a filter in this context, limiting the number of applicants and, at the same time, efficiently supporting a select group.

B. THE “OBLIGATION OF RESULT” FROM THE STATE AND THE MEANS MOBILIZED

⁴⁶ *Ibid* at 14.

⁴⁷ See Anne Laporte, Erwan Le Méner & Pierre Chauvin, “La santé mentale et les addictions des personnes sans logement personnel en Île-de-France” (2010) 5 *La Lettre*, online: Observatoire National de la Pauvreté et de l’Exclusion Sociale <<http://www.onpes.gouv.fr/IMG/pdf/05LETTRE.pdf>>. This discusses a SAMENTA survey conducted in 2009 by the SAMU Social Observatory with a random sample of people without housing in Ile-de-France. It addresses the prevalence of psychiatric disorders and addictions. Among the 21,176 French people without personal housing, nearly a third present with a very incapacitating, severe psychiatric disorder (psychosis, depression, or anxiety). A similar proportion has a dependency on, or regular consumption of, psychoactive substances. There are relatively fewer instances of alcoholism than found in the general population.

⁴⁸ Michael Lipsky, *Street-Level Bureaucracy: Dilemmas of the Individual in Public Services* (New York: Russel Sage Foundation, 1980).

⁴⁹ Pierre-Édouard Weill, “Quand les associations font office de street-level bureaucracy” (2014) 56:3 *Sociologie du travail* 298.

Because the *DALO Act* establishes an “obligation of result” on the state, there are obligations of means or obligations to achieve results on local authorities. The Constitutional Council judged, for instance, that the obligation for some municipalities to comply with a minimum quota of 20% of social housing on their territory, as set down by the *Urban Renewal and Solidarity Act* of 13 December 2000, did not breach the principle of free administration of local authorities (decision No.2000-436-DC of 7 December 2000).⁵⁰ Nevertheless, this objective has been achieved only in places where local authorities have made sound political choices. In Paris, the new mayor, Anne Hidalgo, recently established that the level of social housing to be implemented will be up to 30% of the whole Parisian housing stock, while other municipalities are well under the required 20%. Again, the main point here is that the different forms of accommodation to be mobilized for the *DALO* implementation, and the whole allocation process, are under the control of local stakeholders. As mentioned above, they are classified into two types: proper housing and shelter. Each of the two main types includes many different sub-types according to the status of the property (private or public), the type of funding, the specialization (in terms of tenants or resident or sheltered persons), the official duration of the stay, the support services, and so on. “Generalist sheltering structures” amount to around 86,000 places, “specialized sheltering structures” amount to around 32,000 (for a total of more than 100,000 places⁵¹), and collective homes (*logements-foyers*) accommodate around 153,000 persons.⁵² Hotels such as hotel Paris Opéra accommodate around 38,000 persons.⁵³

Ambiguities of social housing enterprise missions in the three last decades are well-known: The *CCH* reminds us that the construction, allocation, and management of rented social housing will “play a role in implementing the right to housing and contribute to the necessary social mix of towns and neighbourhoods.”⁵⁴ In addition, the *DALO* procedure itself provides for the consideration of this objective, as the prefect must define the scope of housing allocation “taking into account the objectives of social mix defined by the inter-communal or departmental collective agreement.”⁵⁵ Analyses provided by non-French observers usefully underline the contradiction lying at the very core of the social housing sector; that is to say, the tension in the mission of French social housing providers: social housing is expected to implement the right to housing, on the one hand, and to facilitate social mixing and territorial equity on the other.⁵⁶ At that point, a second contradiction has to be noted: in the implementation of the *enforceable* right to housing (*droit opposable*),⁵⁷ while the state has the role of a “leader” and could impose a certain number of obligations of means

⁵⁰ “Implementation,” *supra* note 22.

⁵¹ These numbers exclude collective accommodation for elderly people. Being ruled by hundreds of organizations, their number varies according to the source. See e.g. Emmanuel Pliquet, “Plus de 100.000 places d’hébergement pour les personnes en difficulté sociale” (2015) 916 *Études et résultats*, online: DREES <www.drees.sante.gouv.fr>.

⁵² See HCLPD, *Du foyer de travailleurs migrants à la résidence sociale: mener à bien la mutation—16ème rapport du Haut Comité pour le logement des personnes défavorisées* (July 2010), online: <www.ladocumentationfrancaise.fr/rapports-publics/104000473/index.shtml>.

⁵³ “20^{ème} rapport,” *supra* note 7 at 289.

⁵⁴ *CCH*, *supra* note 34 art L411.

⁵⁵ “Implementation,” *supra* note 22 at 285; *CCH*, *supra* note 34 art L411-2-3.

⁵⁶ Jane Ball, “Property, Altruism and Welfare: What Social Housing Allocation Tells Us about English and French Legal Differences” in Kathleen Scanlon, Christine Whitehead & Melissa Fernández Arrigoitia, eds, *Social Housing in Europe* (Oxford: Wiley Blackwell, 2014) 349.

⁵⁷ There is an issue concerning the translation of the “*droit au logement opposable*.” It is important to say that the phrase “enforceable right” (*droit opposable*) should not imply that a claim, if made, would be successful. Nevertheless, we will use “enforceable right” in this text because it is most commonly used in specialized literature.

or obligations to achieve results on local authorities, namely through the prefect quota, the principle of free administration by local authorities remains preponderant. In other words, “the qualification of ‘national interest’ did not result in a State monopoly in the field of housing.”⁵⁸

Funded by social budgets and operated through private-public partnerships, the housing supply (in terms of accommodation) is also diverse in terms of the methods used to access a place to stay. The whole sector of temporary accommodation⁵⁹ should be considered hybrid: whatever their legal forms are, the owners are individuals or private companies benefiting from public funding in order to offer affordable housing or shelter solutions. The hybridity is also present in the standards: furnished rooms like those of the Paris Opéra hotel are included in the sector, as well as social residences which offer much better living conditions, and *foyers* where standards in terms of comfort, space, and services are very diverse. Social housing is active in the sector, the general model being limited-profit companies benefitting from favourable loans as social constructors⁶⁰ and different types of specific social subsidies provided at national, regional, and departmental levels as they are considered to support public service action. Finally, hybridity is also created by resorting to the ordinary private sector thanks to specific allowances or tax incentives to the landlords: this stock is unfortunately very difficult to measure.

Considering the means that can be mobilized in terms of housing for those who have no home, we have to come back to the evidence that housing deprivation is not a characteristic of a person, but is instead a process that depends both on personal (familial) resources and on the housing that can be mobilized. The *DALO Act* is supposed to facilitate putting supply in front of a demand. However, the situation is totally different from one department to another. Though there are no tensions in other parts of the country, in the Paris region (IDF), as mentioned, the competition for housing is severe, and the number of still-not-rehoused priority households is increasing, with the “stock” of applicants being currently equivalent to the usual number of applicants in three years (surpassing 41,000 persons). The average number of applicants is 140 per 100,000 in France as a whole, and 6 times more—709 per 100,000 inhabitants—in Seine-St-Denis (a less-wealthy department in the Paris region). The departmental level is, in France, the one where the homeless and more generally *DALO* applicants must apply and from which a “housing solution” is supposed to be offered. It is thus within the constellation of actors who play at this level—social landlords, charities, social services, departmental services in charge of housing vulnerable groups according to the PDALPD,⁶¹ and local authorities—that the “solution” must be found. But if the picture is quite different from one region to another, we find generally that housing provision *corresponding to the demand* (that is to say, *affordable*) appears to be insufficient, be it “very social,” “social,” or “private.” Furthermore, the staircase model, in which one moves through a variety of successive accommodations, has been seriously challenged. The “homeless carrier”⁶² from the street to shelter, from shelter to temporary accommodation, and from

⁵⁸ “Implementation,” *supra* note 22 at 279.

⁵⁹ “Temporary Housing,” *supra* note 40.

⁶⁰ Delivered by the *Caisse des Dépôts et Consignations*, a historical institution which serves as a deposit bank for public housing funding.

⁶¹ These plans (see note 20) were introduced by the *Besson Act* of 31 May 1990, which was supposed to monitor the whole housing allocation system. Since then, other services have been created, and the whole system is often criticized for its confusion.

⁶² We use the notion of “carrier” following Hughes’s proposition, *i.e.*, the progression of a person in the course of life (or any particular part of it) according to the psychological changes that accompany the successive steps he or she crosses along. See Howard S. Becker & Anselm L. Strauss, “Careers, Personality and Adult Socialization” (1956) 62:3 *American Journal of Sociology* 253.

temporary accommodation to housing is no longer a massive reality, at least for the more vulnerable—if it ever was.⁶³

C. FROM THE STAIRCASE MODEL TO THE *HOUSING FIRST* PARADIGM

After two decades of active promotion of the “staircase paradigm,”⁶⁴ French housing and social policies have recently decided to conduct “housing first” pilot projects.⁶⁵ The current situation is quite blurred. On the one hand, by betting on the insertion paradigm and the homeless carrier due to a reliance on the staircase paradigm, a large number of transitory accommodations have been constructed or renewed;⁶⁶ on the other hand, much of this transitory accommodation has resulted in a dead-end for those placed there by social services, which has renewed interest in the “housing first” model as a possible alternative. The challenge there lies in how social housing providers can work together with housing support services, social care services, health services, and other forms of support to enable housing to be successful according to the model that arrived from the other side of the Atlantic.⁶⁷

The prevalence of mental health problems among homeless persons has been demonstrated in the Paris region.⁶⁸ The evidence that the “housing first” service model could enable chronically homeless people to enter and maintain themselves in an ordinary house, with the right floating support services in place, has been tested through an experiment initiated in 2010 in Lille, Marseille, Toulouse, and Paris. In each site, the experience includes 100 housing units proposed for three years under rolling leases (the lease is first in the name of the association and then it “rolls” to the tenant) to persons with strong addictions, mental health problems, or those just liberated from prison. In Paris, the organism in charge is “Aurore” in partnership with the Maison Blanche Public Institution of mental health, and other private or public structures.⁶⁹ The program certainly corresponds to the needs of the

⁶³ In *Le Monde* 29 November 2007, Daniel Terrolle was quoted as saying: “J’ai acquis la conviction que les SDF, en grande majorité, ne se réinsèrent pas,” which translates to, “It has become my conviction that the larger part of the homeless never re-enter society” (my translation).

⁶⁴ Ingrid Salhin, “The Staircase of Transition: Survival through Failure” (Paper delivered at the ICCR seminar on Housing and Social Inclusion, Brussels, 16–17 January 2003); See also “Temporary Housing,” *supra* note 40.

⁶⁵ “Housing First” is a concept developed by Dr. Sam Tsemberis in 1992. See Pathways to Housing National, “Housing First Model,” online: <pathwaystohousing.org>. It involves providing homeless persons with assistance and secure and permanent housing as quickly as possible. Housing First means that individuals and families are not required to demonstrate that they are “ready” for housing. It is based on community support and supposes choice and self-determination. Conversely, the staircase model acts on the assumption that individuals have to demonstrate their goodwill to be integrated; as a consequence, a step-by-step progression is proposed.

⁶⁶ Amounting, as seen before, to a total of 86,000 places as shelter, and around 150,000 as more permanent housing/accommodation.

⁶⁷ Sam Tsemberis, “Housing First: Ending Homelessness, Promoting Recovery and Reducing Costs” in Ingrid G. Ellen & Brendan O’Flaherty, eds, *How to House the Homeless* (New York: Russell Sage Foundation, 2010) 37.

⁶⁸ Laporte, *supra* note 47.

⁶⁹ Actually, Aurore is a “Groupement Momentané d’Entreprises” (GME) (a temporary joint company), ruled by both Aurore and Maison Blanche, in charge of the housing management and the medical care of the tenants. Charities are also part of the GME, namely the *Association des Cités du Secours Catholique*, the *Association Charonne*, the *Œuvre Falret*, and the *Centre d’Action Sociale de la Ville de Paris*. See generally Aurore, *Un chez soi d’abord: l’expérimentation française d’Housing First*, online: <aurore.asso.fr/aurore-travail-sur-le-programme-un-chez-soi-dabord>. See also Martine Lacoste & Catherine Pequart, *3èmes Journées nationales de la Fédération Addiction—“Housing First”: nouvelles réponses pour les usagers souffrant de troubles psychiques*, online: <www.vih.org/20131016/housing-first-nouvelles-reponses-pour-usagers-souffrant-troubles-psychiques-37525>.

targeted persons, and seems to have very good results in terms of stabilization. But will those responsible decide to generalize the model and pay for it? At the moment, this remains a limited experiment, having more to do with medical expectations (treating and alleviating suffering) than social ones (reinserting and integrating the persons).

D. DALO, SEVEN YEARS LATER

Since its adoption, as mentioned, the *DALO Act* has received mixed reactions. If some are decidedly optimistic, arguing that a legalized right is always a step toward more justice, others assert that this right is nothing but an additional state program for accessing housing and not the consecration of a right to housing.⁷⁰

To draw a more comprehensive picture: despite quite clear legislation, despite changes in governance intended to promote social cohesion, and despite an emergency program for social rental housing (150,000 social housing units expected to be built annually, and the role of charities and associations in charge of accommodation and shelters to be increased), there are about 700,000 people without a personal residence⁷¹ (homeless, with or without shelter) and five million people in difficult, uncomfortable, or vulnerable housing: this amounts to almost 8% of the population of France.⁷² More precisely, 3,657,000 persons are considered “very vulnerable” (*i.e.*, around 6% of the whole population). Among them, a first category (685,000) includes the most vulnerable, people without their own home, including the homeless (141,000), people temporarily housed in hotels, hostels, makeshift shelters, etc. and people accommodated by another household (411,000). A second, larger category (2,778,000 persons) includes individuals living in substandard or overcrowded housing, and those with precarious occupancy status. In addition, around 500,000 people live in households with rent arrears. Altogether, the Abbé Pierre Foundation found that almost 10 million people living in France are impacted by the “housing crisis” in one way or another. This phenomenon is not decreasing, but is instead increasing. Here two crucial elements have to be noted. First, the national homelessness surveys conducted in 2001 and 2012 show that the number of homeless has increased 50% between 2001 and 2011, from 104,000 in 2001 to 141,000 in 2012.⁷³ Second, analyses now see a continuum between situations of homelessness and situations of housing deprivation, as is advocated in a 2011 INSEE publication. This publication’s title is emblematic of the growth of the phenomenon and of its perception: “Being homeless, experiencing difficult housing conditions.”⁷⁴ Housing deprivation is multifaceted, and has become structural despite the *DALO*.

Actually, it was partly to reverse this trend that the *DALO Act* established an enforceable right to housing and referred to the state as a guarantor of that right. But the number who would qualify to re-house remains higher than the number who have actually

⁷⁰ Jean-Phillipe Brouant, “Un droit au logement...variablement opposable” (2008) 10 ADJA 506. See also France, Council of State, *Droit au logement, droit du logement* (February 2009) at 288.

⁷¹ See the ETHOS typology, which distinguishes *rooflessness* (without a shelter of any kind, sleeping rough), *houselessness* (with a place to sleep but temporary in institutions or shelter), *living in insecure housing* (threatened with severe exclusion due to insecure tenancies, eviction, domestic violence), and *living in inadequate housing* (in caravans on illegal campsites, in unfit housing, in extreme overcrowding).

⁷² “19^{ème} rapport,” *supra* note 7 at 283.

⁷³ Françoise Yaouancq et al, “L’hébergement des sans-domicile en 2012. Des modes d’hébergement différents selon les situations familiales” (July 2013) 1455 INSEE Première. See also European Observatory, *supra* note 12.

⁷⁴ Pierrette Briand & Nathalie Donzeau, “Être sans domicile, avoir des conditions de logement difficiles. La situation dans les années 2000” (January 2011) 1330 INSEE Première.

found accommodation, and the French state was fined 12.9 million EUR in 2012—by its own courts⁷⁵—for its failure to address right-holders’ needs.

The total number of applications received under the *DALO Act* between its gradual implementation in 2008 and 2013 reached 463,091.⁷⁶ The monitoring committee has publically declared that the situation is of great concern, especially in the Paris region (Ile-de-France), with more than 41,375 priority households (up from 36,905 a year ago) still not rehoused. In 2013, 91,091 appeals were lodged, including 52,799 in IDF (58%) and 11,853 (13%) in Paris alone. The national emergency pool set up to ensure that the implementation of the *DALO Act* had all the necessary tools and means that were planned (e.g., prefect-reserved quotas of social housing units, fair prioritization, and so on) has turned out to be insufficient, or at least insufficiently implemented. In 2013, appeals increased monthly by 7,591 on average; about 54% were rejected. Of the total remaining appeals—that is, of those that were accepted—a large part (42%) have not been appropriately accommodated, and most of them (42,408 out of 54,394) have already surpassed the “normal waiting time.”⁷⁷

The priority criteria applied in 2013 were as follows: 26% of applicants were homeless or sheltered at someone else’s house, 10% were under eviction threat without the possibility of re-housing, 7% were in the shelter system, 7% came from a temporary housing (sheltering centers, collective homes, or a furnished room in a hotel), 4% lived in places unfit for human habitation (including dangerous places), around 20% lived in an unhealthy building or overcrowded place together with an handicapped person, and 27% were on the waiting list for housing for an “abnormally long delay.” Looking at the nationality of the applicants, we see that 61% were French, 3% European-community citizens, 33% were from other continents (twice the national rate). In terms of income, 11% earned between 0 € and 0.5 SMIC,⁷⁸ 30% between 0.5 SMIC and 1 SMIC, 24% between 1 and 1.5 SMIC, and 22% earned more than 1.5 SMIC. These data are difficult to analyze because they are not related to the size and composition of the households, but they show the poverty of the majority of the applicants, *and also the percentage of those with low-medium income but no decent home*. We know that 34% of the applications are from single parent households, 32% from single persons, and 27% from families including children.⁷⁹

It is also interesting to track changes in the decision-making and effectiveness of the process itself. In 2013, 36% of applicants received a favourable answer (i.e., they were recognized as priority),⁸⁰ but the favourable decision rate is decreasing. The most striking result is the final re-housing effectiveness (including those who have found a solution by themselves): the rate was 86% in 2008, but it is now only 58.6%. In other words, only 27% of the applicants are finally re-housed if rejections and refusals are taken into account. On the applicants’ side, a significant number refuse the proposals they are offered (around 20%), seriously challenging the management of the allocation system. Location and cost of rent appear to be the two main issues for refusal. The current allocation system is strongly supported by social landlords of all types, but it is difficult not to be aware of the limits of the

⁷⁵ “19^{ème} rapport,” *supra* note 7 at 20.

⁷⁶ Unless otherwise noted, all data in the following paragraphs are quoted from a recent High Committee report, *Le comité de suivi de la loi Dalo réunit ce matin a pris connaissance des statistiques du Droit au logement opposable pour l’année 2013* (March 2014), online: <www.hclpd.gouv.fr/le-comite-de-suivi-de-la-loi-dalo-a112.html>.

⁷⁷ See note 28.

⁷⁸ The “SMIC” is the national guaranteed minimum wage (*salaire minimum interprofessionnel de croissance*). One SMIC amounts to 1,128 euros net per month (1 January 2014).

⁷⁹ France, Comité de suivi de la mise en oeuvre du droit au logement opposable, *Droit au logement: rappel à la loi*, 6th report (November 2012) at 7.

⁸⁰ In 2013, as a whole, 54% were rejected, 36% were accepted, and the remaining part may have found a solution by themselves or have not yet received the decision.

bureaucratic functioning. There are two reasons for that: first, in the current allocation process, it is always the available supply that determines the allocation and *not the need to generate the response in terms of housing allocation*. Second, individuals have their own rationales and motivations, and ignorance or misunderstanding of them can lead to confusion and disillusionment.

Resulting from a complex and quite long-standing policy development path, with many players involved at different levels of the policy system,⁸¹ the enacted enforceable right to housing at first raised much hope but has since been viewed as quite inefficient. Is the enforceable right to housing 2007 act just an additional device for social assistance, or is it a new way of implementing social justice? It has simultaneously aroused great hopes and caused great disappointment and frustration;⁸² seven years after its enactment, one can only report mixed results.⁸³

III. SOCIAL AND POLITICAL CONSEQUENCES: TOWARD A “POST-WELFARE” SOCIETY?

A. THE CHANGING PARADIGM OF SOCIAL INTERVENTION

The obstacles arising out of the *DALO* experience must be interpreted from a broader perspective. In other words, it is important to contextualize the results. The paradigm of social intervention has changed from one where the state takes a decisive role to one where new actors emerging from civil society to fulfill a mission of public service, using new moral and political principles as well as new tools, also play an important role.⁸⁴ The number of interventions in favour of the poor is far from declining, yet actual housing supply remains insufficient considering the demand. The number of *DALO* re-housed applicants might cause us to see the half-empty side of the glass rather than the half-full one. How is that possible? Is the judicial framework faulty? Should the governance be questioned? Is the whole system weakened by a general housing shortage?

We should start by eliminating the last proposition (even if the topic is very much discussed in France at the moment). France *as a whole* has a comfortable ratio of housing units to inhabitant (510/1000) and one of the highest proportions of social housing in Europe (17%)—with the dramatic exception of main urban areas, the Paris region most of all. Far from concerning exclusively the new construction issue, the main stake could be to slow down the rent increases, to achieve energy upgrades and heating renovations for the older part of the housing stock, to improve the living environment in order to make neighbourhoods more attractive (especially in under-served communities) and, obviously, to activate residential mobility: access to existing stock is extremely important when compared with the creation of a new stock by low-rent housing units construction. Access to existing stock is crucial considering that 2,700,000 dwellings are vacated every year, including 400,000 social housing units. The impact of residential mobility is much larger than housing construction: an increase in residential mobility releases tensions and potentially moderates prices—if rents are under control. Obviously, this preference for mobility is correct only at

⁸¹ Houard, *supra* note 24.

⁸² Virginie Saint-James, “Faut-il désespérer du droit au logement?” (2008) 1 *Juris-Classeur Périodique A* 31. See also Rozen Noguellou et al, “Les contentieux DALO” in Jean-Philippe Brouant & Yves Jégouzo, eds, *Le DALO* (Paris: La Documentation Française, 2011) 21 and “Implementation,” *supra* note 22.

⁸³ France, Ministère de l'Égalité, des territoires et du logement, *Mise en œuvre du droit au logement opposable. Point sur les chiffres de l'année 2013* (March 2014).

⁸⁴ See e.g. “Paris and Vienna,” *supra* note 41 at 297; and Weill, *supra* note 49 at 298.

the national level. Local shortages can be extremely challenging, as they are in Ile-de-France, but even there the issue is about affordability and social exclusion.

With regard to the issue of judicial framework, as we've discussed, housing rights are already established in law as an objective of constitutional value. However, this right is effectively limited: "the right to housing being recognized as an objective of constitutional value is not sufficient to raise it to the level of a 'fundamental freedom' under the terms of Article 521-2 of the French Code of Administrative Justice, or as a 'constitutional principle': CE, ord. 3 May 2002, no. 245697."⁸⁵ It is also not, we might add, sufficient for the persons recognized as priority by the departmental COMED and seeking justice. In other words, it may be possible to penalize the state when it fails to provide housing, but it is not possible to obtain *the ends* of that right (*i.e.*, housing) for all qualified applicants.

The conception of rights defended by the law is not universal but is instead based on a historical understanding of national government sovereignty: there are still conditions that must be satisfied to access a *DALO* application (beyond the conditions established by each commission). These conditions also explain *the rejection of half the applicants on average*. In addition to the inability to house oneself, for example, one must also be eligible for social housing (income conditions), and must be either a French citizen or hold a valid residence permit. The right to decent and independent housing's state guarantee is offered to any person who meets the following three cumulative conditions:

1. be of French nationality or have a valid regular residence permit,
2. be unable to obtain or retain decent and independent housing by one's own means,
3. meet the statutory conditions for accessing social housing.⁸⁶

The first condition has become, for many, an insurmountable challenge because of the growing uncertainty regarding the delivery of the first and subsequent renewals of residence permits combined with restrictive asylum and immigration policies. This is a lesson to be drawn also from the Paris Opéra hotel drama. Homelessness has gained another meaning in the context of European (unequal and restrictive) immigration policies, and thus homelessness, in a sense, has become a European concern. The intersections between immigration policies and homelessness are increasingly pronounced within the European context. The huge tension between migration restrictions, housing rights, and development policies toward the countries of origin seems to lead, in the current juncture, to international competition and protectionism to the detriment of negotiated and socially responsible solutions.⁸⁷

At the same time, this right to be housed is still one of "constitutional value." Powerful civil-society groups supporting a constitutionally protected right to housing have been supported by high-ranking officials close to the state, and so the contradiction between the rights (locally interpretable) and the Law (non-negotiable) has been laid bare. But be it more "human" or more "bureaucratic," the treatment of homelessness and housing deprivation through social housing has reached its limit. Moreover, the "very social"

⁸⁵ "Implementation," *supra* note 22 at 279 n 3.

⁸⁶ "Droit au logement opposable (Dalo): faire valoir son droit à un logement," online: Service-Public.fr <vosdroits.service-public.fr/particuliers/F18005.xhtml>.

⁸⁷ This is actually another fruitful field of research that connects to but exceeds the scope the present paper. See e.g. Cristina Gortázar et al, eds, *European Migration and Asylum Policies: Coherence or Contradiction? An Interdisciplinary Evaluation of the EU Programmes of Tampere (1999), The Hague (2004), Stockholm (2009)* (Gent: Uitgeverij Bruylant, 2012); and the "Observatoire des Frontières" reports by Migreurop, online: <www.migreurop.org/rubrique418.html>.

provision—temporary accommodation, shelters, hotels, etc.—considered both desirable and problematic, contributes to the blurring of the right to housing, introducing new norms and justifying interventions in the private sphere of intimacy. While favouring “deserving” and “willing-to-be-integrated” persons, the mechanism of assistance is reactivated, empowerment discouraged, and conditions for an aggravated conflict among the applicants realized.⁸⁸

B. DESIRES OF RIGHTS IN A CONTEXT OF GROWING INEQUALITIES: TOWARD A POST-WELFARE SOCIETY?

Welfare society was ruled by a common understanding of equity, of “taking part in” and “being protected by.”⁸⁹ At the same time, it was based on a more or less consensual approach to the distribution of rights and goods to beneficiary groups on a nation-based approach. A post-welfare regime could be characterized by the individualization of responsibility coupled with the strengthening of the security net provided by charitable assistance in the context of liberal governance of the housing market. The paradox of dedicating a huge assistance budget, on the one hand, and the incapacity to secure housing for all, on the other hand, is part of “post-welfare governance.” This statement is also based on a historical pattern,⁹⁰ a parallel evolution of ideology, urban forms, economic context, social morphology, targeted groups, and alliances between actors. Ball notes, for instance, that the organization of French social housing and access to rights includes “bargaining mechanisms” issued from industrial times, which can be active nowadays even if the tenants’ participation in decision-making is far from being mainstream: a local arbitration takes place where social landlords and municipalities dominate (against tenants and state representatives).⁹¹

In that interpretative framework, welfare society starts as a national-liberal one, where collective protections are provided by the state and its partners (private sector and supportive large nationalized sector) in a context of huge labour immigration, enlarged access to consumption, urbanization through “new towns,” and the redevelopment of city centres under the reign of the “modern movement” supported by large social housing estates construction. As is well known, an economic crisis started at the end of the seventies, putting pressure on the urban social division of space and on the labour market. Together with these new trends, a retreat of the social state started to operate, weakening the collective actors (unions) and favouring the emergence of new partnerships and alliances. With “flexible capitalism”⁹² and globalization, new meanings of “the social” have developed: while the welfare state used to provide almost universal protection and the possibility of upward social mobility, the period which followed prioritized state aid for “deserving” targeted groups and promoted capitalization strategies (home ownership among others) for those able to become “self-entrepreneurs” and take personal responsibility for the risk.⁹³ As Robert Castel used to say, the time after-the-protections has arrived.⁹⁴

One may consider the *DALO* as both an effect and an accelerator of the transition from a welfare regime to a post-welfare one. The progressive implementation of the right to

⁸⁸ See Pascale Dietrich-Ragon, *Le logement intolérable. Habitants et pouvoirs publics face à l'insalubrité* (Paris: PUF, 2011); and Le Méner, *supra* note 3.

⁸⁹ François Ewald, *L'Etat providence* (Paris: Grasset, 1986).

⁹⁰ “Paris and Vienna,” *supra* note 41.

⁹¹ Ball, *supra* note 56.

⁹² Richard Sennett, *The Corrosion of Character: The Personal Consequences of Work in the New Capitalism* (London: Norton, 1998).

⁹³ Ulrich Beck, *Risk Society: Towards a New Modernity* (New Delhi: Sage, 1992) [*Risk*]; Ulrich Beck & Elisabeth Beck-Gernsheim, *Individualization: Institutionalized Individualism and its Social and Political Consequences* (London: Sage, 2002).

⁹⁴ Robert Castel, *La montée des incertitudes. Travail, protections, statut de l'individu* (Paris: Seuil, 2009).

housing has been transformed into an enforceable right from 1990 to 2007. The advancement of a right to housing through the *DALO Act* has been made possible by an alliance between global elite groups—including lawyers, politicians, charities, civil society activists—and is currently fuelled by the approbation of public and private actors in the field of urban development and housing construction: more housing units, more rights, more responsibility and, as this is not enough, a large “very social” provision supposed to tackle deep poverty and exclusion. Of course, it is true that in-need households are re-housed thanks to the *DALO*. But instead of reinforcing the position of those more vulnerable *generally*, one must admit that it has also created exceptions and exclusions. Increasing competition between territories should be included in the picture together with fewer margins for state leadership. However, the system reflects the fundamental ambiguity created by the mismatch between supply and demand, the indecisive local monitoring of public resources allocation and, finally, the blurred frontiers circumscribing the right-holders’ groups as local interpretation plays a crucial role “from ‘compassionate neutrality’ to open hostility,”⁹⁵ obviously depending on the local configurations, historical routines, and patterns of interests.

IV. CONCLUSION

The implementation of an enforceable housing right provides considerable potential to highlight policy responses to the “housing question” (and even more generally the social question) as formulated in the second decade of the twenty-first century. In this regard, the French experience reveals a number of challenges and contradictions: on the one hand, fragmented governance arrangements (or even local irredentism), competing social goals, and a still-unaffordable, immobilized, or otherwise “filtered” housing supply; on the other hand, a claim for universal rights and a need to find a (collective) way to deal with a “risk society”⁹⁶ as inclusively as possible based on local solidarity and networking. The process of decentralization alongside the drastic diminution of public expenditure at the national level—and thus subvention to the departments and municipalities—is a kind of squaring the circle as it puts pressure on the local to handle the problem of housing. In order to be efficient, housing rights must be strongly promoted, monitored, and supported in each department by the government’s representatives (the prefects). At the same time, the prefects can hardly support the delivery of housing to the prioritized households when they have to deal with reluctant social housing companies or municipalities trying at any cost to avoid the burden of social expenditures—for example under the form of undocumented families benefiting from protection due to the presence of children. In Paris, for instance, there is a permanent tension between the surrounding departments and the inner city of Paris; the municipality accuses the departments of refusing to share the burden of accommodating poor and often undocumented families (and the burden of welcoming their children at school) by concentrating those families in the inner city. For its part, the departments argue that these people are “SAMU Social 115 families,”⁹⁷ and that the departments cannot afford the “pouring of Parisian misery” into their territories because they are already dedicating 90% of the childcare departmental budgets to subsidize the cost of overnight hotel stays. “The increase in the number of people to be accommodated thus raised a financial question, and it was up to each payer, whether the Department or State, to curb expenditure.”⁹⁸

⁹⁵ “Implementation,” *supra* note 22 at 288.

⁹⁶ *Risk*, *supra* note 93.

⁹⁷ See note 2.

⁹⁸ “Temporary Accommodation,” *supra* note 6 at 98.

In a way, the Paris Opéra hotel tragedy is emblematic of our times: at the time of the fire, those “temporarily accommodated” people were both rights-holders (as families) and also, very often, were without rights *in the DALO sense* as undocumented migrants. Now, these people are all entitled to a formal right to stay, and they can find a place in the social housing sector without proceeding through the *DALO* as a consequence of being victims of the drama and also thanks to the commitment of housing rights associations. But the Paris Opéra tragedy continues to highlight legal and policy failures and reveal the real barriers to realizing a right to housing: as long as these individuals and families can’t access the labour market, and consequently pay, at least partly, for their own accommodation, they will continue to suffer the worst forms of social exclusion and exploitation. Because of their numbers, those most in need of housing will also continue to displace the initial use of hotels as first-step shelters for isolated homeless persons. At the same time, the story of the Paris Opéra hotel shows that as soon as families have received a stable legal permit and social housing in a familiar neighbourhood, they can become independent and dedicate themselves to the reconstruction of their lives. The decisive importance of being properly housed, on the basis of which promoters of an enforceable right to housing have legitimated the Law, appears in all its critical dimensions.

Competition for a position (work) and a place (home) has become the major issue of current times. Housing policy is today characterized by fragmented governance. Interesting recommendations emerge from committed experts, exemplifying the need for new ideas: improving the application process to social housing at different stages of the allocation process; improving the quality and the effectiveness of responses to applicants; ensuring transparency and objectivity in the selection of candidates; establishing a mechanism for access to social housing based on local resources; and promoting an approach to preventing discrimination⁹⁹ are the more relevant ones.

Nevertheless, answers in terms of technical improvements may not be sufficient to strengthen the improbable social cohesion. Recent important housing acts (*DALO*, 2007; *ALUR*, 2014) will reverse the trend of fragmentation only if embedded into a much more complete understanding of the housing question, that is, an understanding which would recognize that housing supply has just become too expensive and too selective, and that homelessness is an extreme expression of new forms of poverty and exclusion.¹⁰⁰ All dimensions of exclusionary processes should then be taken into account, including immigration policy. At the moment, the treatment of housing deprivation proceeds in two quite different directions: individual rights consolidation for targeted right-holders, on the one hand, and tentative attempts to re-politicize the housing question as a matter of common interest and social security on the other. The first direction distributes protections according to a selective (juridical) path submitted to possibly divergent appreciations and to unequal capabilities; the second tends to construct universal (socio-political) norms and attempts to restore equity and social cohesion. Together, these two directions illustrate the tension currently active in our post-welfare societies.

⁹⁹ HALDE, *supra* note 11.

¹⁰⁰ Cécile Brousse, “Becoming and Remaining Homeless: The Disintegration of Social Links or Difficulties in Accessing Housing?” (2006) 391–392 *Économie et statistique* 35, online: <www.insee.fr/en/themes/document.asp?reg_id=0&id=1804>.